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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARCUS BURRELL,

 Petitioner,

 v.

WARDEN, HIGH DESERT STATE
PRISON, et al.,

 Respondents.

Case No. 2:18-cv-00037-JCM-CWH
ORDER

Before the court are petitioner’s motion for stay and abeyance (ECF No. 8) and respondents’ opposition (ECF No. 9). The court grants petitioner’s motion.

Petitioner asks for a stay of this action to let him present claims of ineffective assistance of counsel in state court. In King v. Ryan, 564 F.3d 1133 (9th Cir. 2009), the court of appeals held that its three-step method of staying a federal habeas corpus action without a requirement of showing good cause is still available. First, a petitioner files in federal court a motion to stay and an amended petition that contains only exhausted grounds, and the federal court stays the action. Second, the petitioner exhausts his unexhausted grounds in a post-conviction petition filed in the state courts. Third, the petitioner files in federal court a motion to reopen the action and a further amended petition that contains all grounds for relief. Id. at 1138-39.

1 All the claims in the newest amended petition must relate back to properly exhausted
2 claims left pending in federal court. Id. at 1142. A stay under King thus is likely to result in
3 grounds that are exhausted but untimely. Petitioner acknowledges that. ECF No. 8, at 2. Given
4 that he knows the risks, the court grants the motion. Petitioner does not need to file an amended
5 petition first, because the petition (ECF No. 6) currently contains only one claim, which is
6 exhausted.

7 Respondents have filed a motion for enlargement of time (first request) (ECF No. 10).
8 They ask for additional time to file a response to the petition pending the court's resolution of the
9 motion for stay. The court grants this motion.

10 In the order of May 29, 2018 (ECF No. 5), the court denied petitioner's motion for
11 appointment of counsel but omitted an order to that effect. The court corrects the omission now.

12 IT THEREFORE IS ORDERED that petitioner's motion for appointment of counsel (ECF
13 No. 2) is **DENIED**.

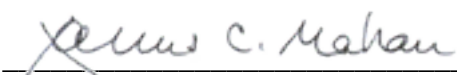
14 IT FURTHER IS ORDERED that respondents' motion for enlargement of time (first
15 request) (ECF No. 10) is **GRANTED**.

16 IT FURTHER IS ORDERED that petitioner's motion for stay and abeyance (ECF No. 8)
17 is **GRANTED**.

18 IT FURTHER IS ORDERED that this action is **STAYED** pending exhaustion of the
19 unexhausted claims. Petitioner shall return to this court with a motion to reopen within forty-five
20 (45) days of issuance of the remittitur by the Nevada Supreme Court at the conclusion of the state
21 court proceedings. Further, petitioner or respondents otherwise may move to reopen the action
22 and seek any relief appropriate under the circumstances.

23 IT FURTHER IS ORDERED that the clerk of court shall administratively close this action
24 until such time as the court grants a motion to reopen the action.

25 DATED: September 21, 2018.

26 
27 JAMES C. MAHAN
28 United States District Judge